

108TH CONGRESS  
1ST SESSION

# H. R. 767

To amend the Internal Revenue Code of 1986 to encourage investing of foreign earnings within the United States for productive business purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2003

Mr. ENGLISH (for himself, Mr. DREIER, Mr. BRADY of Texas, and Ms. DUNN) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to encourage investing of foreign earnings within the United States for productive business purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Homeland Investment  
5       Act of 2003”.

6       **SEC. 2. TOLL TAX ON EXCESS QUALIFIED FOREIGN DIS-**  
7       **TRIBUTION AMOUNT.**

8       (a) IN GENERAL.—Subpart F of part III of sub-  
9       chapter N of chapter 1 of the Internal Revenue Code of

1 1986 (relating to controlled foreign corporations) is  
 2 amended by adding at the end the following new section:

3 **“SEC. 965. TOLL TAX IMPOSED ON EXCESS QUALIFIED FOR-**  
 4 **EIGN DISTRIBUTION AMOUNT**

5       “(a) TOLL TAX IMPOSED ON EXCESS QUALIFIED  
 6 FOREIGN DISTRIBUTION AMOUNT.—If a taxpayer elects  
 7 the application of this section, a tax shall be imposed on  
 8 the taxpayer in an amount equal to 5.25 percent of—

9               “(1) the excess qualified foreign distribution  
 10       amount, and

11               “(2) the amount determined under section 78  
 12       that is attributable to such excess qualified foreign  
 13       distribution amount.

14 Such tax shall be imposed in lieu of the tax imposed under  
 15 section 1 or 11 on such amounts.

16       “(b) EXCESS QUALIFIED FOREIGN DISTRIBUTION  
 17 AMOUNT.—

18               “(1) IN GENERAL.—The term ‘excess qualified  
 19       foreign distribution amount’ means the excess (if  
 20       any) of—

21               “(A) dividends received by the taxpayer  
 22       during the taxable year from corporations that  
 23       are controlled foreign corporations in which the  
 24       taxpayer is a United States shareholder on the  
 25       date such dividends are paid, over

1 “(B) the base dividend amount.

2 “(2) BASE DIVIDEND AMOUNT.—The term  
3 ‘base dividend amount’ means an amount not less  
4 than the average amount of dividends received dur-  
5 ing the fixed base period from corporations that are  
6 controlled foreign corporations in which the taxpayer  
7 is a United States shareholder on the date such divi-  
8 dends are paid.

9 “(3) FIXED BASE PERIOD.—

10 “(A) IN GENERAL.—The term ‘fixed base  
11 period’ means each of 3 taxable years which are  
12 among the 5 most recent taxable years of the  
13 taxpayer ending on or before December 31,  
14 2002, determined by disregarding—

15 “(i) the 1 taxable year for which the  
16 corporation had the highest amount of  
17 dividends from controlled foreign corpora-  
18 tions relative to the other 4 taxable years,  
19 and

20 “(ii) the one taxable year for which  
21 the corporation had the lowest amount of  
22 dividends from controlled foreign corpora-  
23 tions relative to the other 4 taxable years.

24 “(B) SHORTER PERIOD.—If the taxpayer  
25 has fewer than 5 taxable years ending on or be-

1 fore December 31, 2002, then in lieu of apply-  
2 ing subparagraph (b)(3)(A), the fixed base pe-  
3 riod shall mean such shorter period rep-  
4 resenting all of the taxable years beginning on  
5 or before December 31, 2002. Rules similar to  
6 the rules of section 41(f)(3) shall apply in the  
7 case of acquisitions or dispositions of controlled  
8 foreign corporations beginning after the fixed  
9 base period.

10 “(c) DEFINITIONS AND SPECIAL RULES.—

11 “(1) DIVIDENDS.—For purposes of this section,  
12 the term ‘dividend’ means a dividend as defined in  
13 section 316, except that the term shall also include  
14 amounts described in section 951(a)(1)(B), and shall  
15 exclude amounts described in section 78.

16 “(2) CONTROLLED FOREIGN CORPORATIONS  
17 AND UNITED STATES SHAREHOLDERS.—For purpose  
18 of this section, the term ‘controlled foreign corpora-  
19 tion’ shall have the same meaning as under section  
20 957(a) and the term ‘United States shareholder’  
21 shall have the same meaning as under section  
22 951(b).

23 “(3) FOREIGN TAX CREDITS.—The amount of  
24 any income, war, profits, or excess profits taxes paid  
25 (or deemed paid under sections 902 and 960) or ac-

1       crued by the taxpayer with respect to the excess  
2       qualified foreign distribution amount for which a  
3       credit would be allowable under section 901 in the  
4       absence of this section shall be reduced by 85 per-  
5       cent.

6               “(4) FOREIGN TAX CREDIT LIMITATION.—For  
7       all purposes of section 904, there shall be dis-  
8       regarded 85 percent of—

9               “(A) the excess qualified foreign distribu-  
10       tion amount, and

11              “(B) the amount determined under section  
12       78 that is attributable to such excess qualified  
13       foreign distribution amount.

14              “(5) TREATMENT OF CONSOLIDATED  
15       GROUPS.—Members of an affiliated group of cor-  
16       porations filing a consolidated return under section  
17       1501 shall be treated as a single taxpayer in apply-  
18       ing the rules of this section.

19              “(6) DESIGNATION OF DIVIDENDS.—The tax-  
20       payer shall designate the particular dividends re-  
21       ceived during the taxable year from one or more  
22       controlled foreign corporations in which it is a  
23       United States shareholder that are dividends ex-  
24       cluded from the excess qualified foreign distribution

1 amount. The total amount of such designated divi-  
2 dends shall equal the base dividend amount.

3 “(d) ELECTION.—

4 “(1) IN GENERAL.—An election under this sec-  
5 tion shall be made on the taxpayer’s timely filed in-  
6 come tax return for the taxable year (determined by  
7 taking extensions into account) and, once made, may  
8 be revoked only with the consent of the Secretary.

9 “(2) ALL CONTROLLED FOREIGN CORPORA-  
10 TIONS.—The election shall apply to all controlled  
11 foreign corporations in which the taxpayer is a  
12 United States shareholder during the taxable year.

13 “(3) CONSOLIDATED GROUPS.—If a taxpayer is  
14 a member of an affiliated group of corporations fil-  
15 ing a consolidated return under section 1501 for the  
16 taxable year, an election under this section shall be  
17 made by the common parent of the affiliated group  
18 which includes the taxpayer, and shall apply to all  
19 members of the affiliated group.

20 “(e) REGULATIONS.—The Secretary shall prescribe  
21 such regulations as may be necessary and appropriate to  
22 carry out the purposes of this section, including regula-  
23 tions under section 55 and regulations addressing corpora-  
24 tions that, during the fixed base period or thereafter, join

1 or leave an affiliated group of corporations filing a consoli-  
2 dated return.”.

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 for such subpart is amended by adding at the end the fol-  
5 lowing new item:

“Sec. 965. Toll tax imposed on excess qualified foreign distribu-  
tion amount.”.

6 (c) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply only to the first taxable year of  
8 the electing taxpayer ending 120 days after the date of  
9 the enactment of this Act.

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